

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

RUSTY RICHARD DAVIES, }
Petitioner, }
v. } Civil Action No. 07-47 Erie
COMMONWEALTH OF PENNSYLVANIA, }
Respondent. }

MEMORANDUM ORDER

This habeas corpus action was received by the Clerk of Court on March 16, 2007, and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation [Doc. No. 15], filed on September 28, 2007, recommended that Petitioner's Petition be dismissed as untimely and that a certificate of appealability be denied. It was further recommended that the motion to dismiss filed by the Respondent [Doc. No. 11] be dismissed. The parties were allowed ten (10) days from the date of service to file objections. Service was made on Petitioner by certified mail and on Respondent. No objections were filed. After de novo review of the petition, motion and documents in the case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 18th day of October, 2007;

IT IS HEREBY ORDERED that the Petitioner's Petition for Writ of Habeas Corpus is DISMISSED as untimely and a certificate of appealability is DENIED; IT IS FURTHER ORDERED that Respondent's motion to dismiss [Doc. No. 11] is DISMISSED.

The Report and Recommendation [Doc. No. 15] of Magistrate Judge Baxter, filed on September 28, 2007, is adopted as the opinion of the Court.

s/ Sean J. McLaughlin
United States District Judge

cm: All parties of record
Susan Paradise Baxter, U.S. Magistrate Judge